

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 04-0180P

Income Tax

For the Short Period ending March 26, 2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment of a short period income tax return for the period ending March 26, 2002.

The taxpayer is an out-of-state company.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the late penalty should be abated as the taxpayer did not have the information available at the election date to file the income tax return, and, the taxpayer has a good compliance record.

The taxpayer was acquired by another corporation in the tax year in question. At the time of the acquisition, the taxpayer did not know if the acquisition would be a stock transfer, or, an asset transfer. In the event the transfer was an asset transfer (Section 338(h)(10)), the taxpayer would have to file a short period income tax return. On July 15, 2002, the taxpayer paid an extension payment in the event the taxpayer decided to do an asset election at a later date. Later, the taxpayer actually decided to do an asset transfer and it took several months for the taxpayer to determine the tax liability. The tax liability was paid three weeks after the election date (due date) and deemed three weeks late.

The Department points out that the taxpayer knew at least by November 9, 2002, that an asset election would be made. The Department feels that the taxpayer had plenty of time (over one month), in which to properly calculate the tax liability. On this point, the Department feels the taxpayer fails to establish reasonable cause.

With regard to the compliance history, the taxpayer has had several late filings. The Department feels the taxpayer fails to establish reasonable cause on this point.

The regulation which controls penalty is 45 IAC 15-11-2(b) which states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.